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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

File: WAC-02-227-50118

Office: CALIFORNIA SERVICE CENTER

Date: JAN 22 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

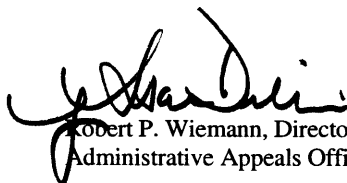
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner distributes personal computers and peripherals. It seeks to employ the beneficiary as a management analyst. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and a credentials evaluation for the beneficiary.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management analyst. The petitioner indicated in a June 26, 2002 letter that the beneficiary's academic training, which has been evaluated as the equivalent of a master's degree in business administration, qualifies him for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary is qualified for the position because the record contains a credentials evaluation demonstrating that he holds the equivalent of a master's degree. Counsel also asserts that the beneficiary has more than six years of related work experience. Counsel also submits another copy of an evaluation from Morningside Evaluations and Consulting.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a business-related field. The beneficiary holds a Bachelor of Science degree in Marine Food Science from a Taiwanese university, and a certificate from a Taiwanese international trade institute certifying that the beneficiary had successfully completed the courses of the International Business Administration Program. An evaluator from Morningside Evaluations and Consulting concluded that the beneficiary holds the equivalent of a bachelor's degree and a Master of Business Administration degree from an accredited institution of higher education in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

On appeal, counsel submits a copy of the previously submitted evaluation from Morningside Evaluations and Consulting, a company that specializes in evaluating academic credentials. The evaluator's conclusion that the beneficiary holds the equivalent of a bachelor's degree and a Master of Business Administration degree from an accredited institution of higher education in the United States is noted.

Citizenship and Immigration Services (CIS) uses an independent evaluation of a person's foreign credentials in terms of education

in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

In this case, the evaluator concludes that the beneficiary's Bachelor of Science degree in Marine Food Science and his certificate from the International Trade Institute in Taiwan are the equivalent of a Master of Business Administration degree from an accredited institution of higher education in the United States.

The beneficiary's transcript from the Taiwanese International Business Administration Program indicates that the beneficiary completed a two-year course consisting of 2,572 hours, the majority of which related to language classes. The website for the International Trade Institute in Taiwan at <http://www.cetra.org.tw/tpt/iti/folder00/subpage01.htm> does not contain any specifics relating to the two-year course taken by the beneficiary. The website does, however, describe a course description for a "Business Major" as follows:

Established in June 2000, this one-year program is designed for those with superior English skills and who want to focus on business. While core language skills are covered, the stress is on business English. Along with fourteen hours of language a week, students receive 684 hours of trade courses. Only 44 students are in this program. Of those, about 20 are concurrently enrolled in Chiao Tung University's MBA program. When they finish their one year at ITI, they continue next door to receive their MBA.

It is noted that the "Business Major" curriculum contains 684 hours of trade courses, yet the students must study concurrently at the Chiao Tung University to receive their MBA. The beneficiary's transcript indicates that, although his course was two years in duration, he completed approximately the same number of business-related course hours as contained in the "Business Major" curriculum, a course of study that, in and of itself, does not lead to a master's degree. There is no information at the referenced website that indicates that any of International Trade Institute's courses, coupled with a baccalaureate degree, lead to a master's degree. Furthermore, in this case, although the beneficiary holds a B.S. degree, his major in Marine Food Science is unrelated to the proffered position. In view of the foregoing, the evaluator's conclusion

that the beneficiary's educational background is the equivalent of a master's degree in business administration is not convincing. Thus, the evaluation carries no weight in these proceedings.

On appeal, counsel states that the beneficiary has more than six years of related work experience. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. On appeal,

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

counsel states that the beneficiary had more than six years of related work experience. It is noted that the record does not contain an evaluation of the beneficiary's education and work experience. As described by the employer, the beneficiary's duties did not appear to involve the theoretical and practical application of management analysis. The record contains a letter indicating that the beneficiary has worked with Acer Inc., the petitioner's parent company, since January 1996, performing a variety of business-related activities, such as account manager, sales manager, and business management. The employer, however, does not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is management analysis.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.